



# भारत का राजपत्र

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No. 2] NEW DELHI, SATURDAY, JANUARY 8, 1994/PAUSA 18, 1915

इस भाग में भिन्न पृष्ठ संख्या वाली है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएँ  
Orders and Notifications issued by Central Authorities (other than the Administration of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 7 दिसंबर, 1993

आ. अ. 2.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट विधान सभा के उप निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अध्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदीन बनाए गए नियमों द्वारा अपेक्षित उस सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन वर्षों का लेखा दर्शित करने में असफल रहा है;

और उक्त अध्यर्थियों ने सम्यक् मूलता दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण यथा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अध्यावेदनों पर, यदि कोई हो, विवार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्यात कारण या त्यायोचित्य नहीं है;

अतः अब निर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/मंड़ राज्य-शेक्त की विधान सभा यथा विधान परिषद् के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निर्धारित घोषित करता है।

## सारणी

| क्र.सं. | निर्वाचन का विवरण                       | विधान सभा निर्वाचन-क्षेत्र की क्रम सं.<br>और नाम | निर्वाचन लड़ने वाले ग्रन्थार्थी का नाम<br>और पता   |
|---------|---|--|--|
|         |   | 3  | 4  |
| 1.      | गुजरात विधान सभा के लिए उपनिर्वाचन 1993 | 53-कुंडला  | श्री चेदवाडिया मुकेश भाई देव जी<br>भाई, मु. पोस्ट केरल तालुक, सावर<br>कुंडला जिला-भावनगर |
| 2.      | —वही—                                   | —वही—  | श्री सी.एस. जिकदारा मु. पोस्ट<br>मोटा भामोदरा, तालुक, सावर कुंडला,<br>जिला भावनगर        |
| 3.      | —वही—                                   | —वही—  | देवराज घूसा मु. पोस्ट मोलादी तालुक<br>सावर कुंडला, जिला भावनगर।                          |

[सं. 76/गुज. वि.स./93(उप)]  
आदेश से,  
बलवन्त सिंह, सचिव

## ELECTION COMMISSION OF INDIA

## ORDER

New Delhi, the 7th December, 1993

O.N. 2.—Whereas the Election Commission is satisfied that each of the contesting candidate specified in column (4) of the Table below at the Bye-Election to the Legislative Assembly as specified in column (2) held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representation made by him, if any, is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the person specified in column (4) of the Table below to be disqualified for being Chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State or Union Territory for a period of 3 years from the date of this order:—

## TABLE

| S. No. | Particulars of Election                             | S.No. and Name of the Assembly Constituency | Name and address of the contesting Candidate   |
|--------|---|---|--|
| 1      | 2   | 3   | 4  |
| 1.     | Bye-Election to Gujarat Legislative Assembly, 1993. | 53-Kundla                                   | Sh. Chedvadiya Mukeshbhai Devajibhai,<br>At Post. Kerala Taluka. Savarkundla,<br>Distt. Bhavnagar. |
| 2.     | -do-  | -do-  | Sh. C.S. Jikadara<br>At Post. Mota Bhamodra, Taluka,<br>Savarkundla Distt. Bhavnagar.              |
| 3.     | -do-  | -do-  | Sh. Devaraj Ghusa,<br>At Post. Moladi, Taluka,<br>Savarkundla, Distt. Bhavanagar.                  |

[No. 76/GJ-LA/93(Bye)]

By Order,  
BALWANT SINGH, Secy.

नई दिल्ली, 17 दिसंबर, 1993

आ. अ. 3.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रश्न शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग राजस्थान सरकार के परामर्श से श्री सुधीर वर्मा, आई.ए.एस., सचिव, उच्च शिक्षा और संकानीकी शिक्षा विभाग को श्री एच. सी. पांडे के स्थान पर उनके कार्यभार संभालने की तारीख से आगामी आदेशों तक राजस्थान राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री सुधीर वर्मा, आई.ए.एस., राजस्थान सरकार के अधीन सभी पदभार या किसी कार्य का पदभार तत्काल सौंप देंगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे। किसी अपवाद की अनुमति नहीं दी जायेगी।

3. श्री सुधीर वर्मा, आई.ए.एस. को राजस्थान के मुख्य निर्वाचन अधिकारी के रूप में कार्य करते हुए राजस्थान सरकार के अधीन किसी प्रकार का कोई भी अतिरिक्त कार्यभार ग्रहण करने का आदेश नहीं दिया जायेगा, सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन आयोग के अधीन विभाग के प्रभारी, सरकार के सचिव नामित किया जायेगा, जैसा कि राज्य सरकार द्वारा निर्णय लिया गया है।

4. यदि सुधीर वर्मा, आई.ए.एस. को आयोग के पूर्व लिखित अनुमोदन के बिना किसी भी प्रकार का कोई अतिरिक्त कार्यभार सौंपा या ग्रहण करवाया जायेगा तो वे इस आदेश के अनुसार ऐसा अतिरिक्त कार्यभार ग्रहण करने की तारीख से मुख्य निर्वाचन अधिकारी, राजस्थान के पदभार से अपने शाप हटा दिए गए, समझे जायेंगे और किन्हीं अलग आदेशों को जारी करने की आवश्यकता नहीं होती। उसके पश्चात् मुख्य निर्वाचन अधिकारी के रूप में उनकी ड्यूटी और कार्य के तथाकथित निवहन में उनके द्वारा की गई सभी या कोई कार्रवाई प्राप्तिकृत और नास्ति और शून्य होगी और वे अपने विस्तृ अनुशासनिक कार्रवाई के लिए स्वयं उत्तरवादी होंगे।

[सं. 154/राज./93]

आदेश से,  
के. पी. जी. कुट्टी, सचिव

New Delhi, the 17th December, 1993

O.N. 3.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Rajasthan hereby nominates Shri Sudhir Verma, IAS, Secretary to Government, Higher Education & Technical Education Departments as the Chief Electoral Officer for the State of Rajasthan with effect from the date he takes over charge and until further orders vice Shri H. C. Pande.

2. Shri Sudhir Verma, IAS shall cease to hold and hand over forthwith the charge of all or any charges of work, under the Government of Rajasthan which he may be holding before such assumption of office. No exceptions will be permitted.

3. Shri Sudhir Verma, IAS while functioning as the Chief Electoral Officer, Rajasthan shall not be ordered to hold any additional charge whatsoever under the Government

of Rajasthan, except that he should be designated Secretary to the Government incharge of Department under the Election Commission in the State Secretariat as decided by the State Government.

4. If Shri Sudhir Verma, IAS is entrusted with or is made to hold any additional charge of any kind whatsoever without the prior written approval of the Commission, he shall stand removed automatically from the office of the Chief Electoral Officer, Rajasthan from the date of assumption of such additional charge as per this order and no separate orders will, or need to, issue. All and any action taken by him thereafter in the so called discharge of his duties and functions as the Chief Electoral Officer shall be unauthorised and non-existent and void and he shall render himself liable to disciplinary action.

[No. 154/RJ/93]

By Order,  
K. P. G KUTTY, Secy.

नई दिल्ली, 20 दिसंबर, 1993

आ. अ. 4.—निर्वाचन आयोग 1991 की निर्वाचन अर्जी सं. 4 में तारीख 04-12-1992 को मद्रास उच्च न्यायालय क्षेत्राधिकार का निर्णय लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुमरण में इसके द्वारा प्रकाशित करता है।

[सं. 82/त.न.-सो.स./4/91-93]

आदेश से,  
बलवत्त सिंह, सचिव

New Delhi, the 20th December, 1993

O.N. 4.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Judgment of the High Court of Judicature at Madras dated 4th December, 1992 in Election Petition No.

[No. 82/TN-HP/4/91-93]

By Order,

BALWANT SINGH, Secy.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS  
ORIGINAL JURISDICTION**

Friday, the fourth day of December, 1992

The Hon'ble Mr. Justice Maruthamuthu.

Election Petition No. 4 of 1991

P. N. Subramaniam

...Petitioner

Vs.

1. B. Devarajan
2. Kangani C. N.
3. G. Sugannya
4. Tmt. Susi Rajendran M. K.
5. A. C. Sundararajan
6. A. Dharamarajan
7. D. Rajagopal
8. P. Ramaswami
9. P. Jayapaul
10. A. Ganapathy
11. K. Kaliyaperumal
12. R. Kuppusami
13. K. Gurusami
14. Mummudi Arasan
15. The Returning Officer, 15, Rasipuram (SC), Parliamentary Constituency, and District Revenue Officer, Salem. ...Respondents.

Election petition under Sections 81, 36, 100(1)(c) of the Representation of the People Act, 1951, Rule 3 of the Constitution (Scheduled Castes) Order, 1950 and the Rules of Madras High Court—Election Petition, 1967 praying for an order to :

- (1) Declare that the order of the rejection of the nomination of the petitioner by the 15th respondent as not valid;
- (2) Declare that the election of the first respondent as member of Lok Sabha from No. 15, Rasipuram Parliamentary Constituency in the Election held on 15th June, 1991 as void and to set aside the declaration made on 17th June, 1991 as void; and
- (3) Award the costs of the Petition.

This Election Petition coming on for hearing before this Court on Friday the 7th, and Friday the 28th day of August, 1992, Friday the 4th day of September, 1992, Friday the 16th and Friday the 30th days of October, 1992, Wednesday the 11th, Friday the 13th and Wednesday the 18th days of November, 1992; upon reading the Petition, the Counter Statements of the first and fifteenth respondents and the reply affidavit of the Petitioner; upon hearing the evidence adduced; upon perusing the documents marked and upon hearing the arguments of Mr. T. Kandasami, Advocate for the Petitioner or Mr. S. Jagadeesan, Advocate for the first Respondent and of Mr. P. Rajamanickam, Government Advocate for the fifteenth Respondent and Respondents 2 to 14 not appearing either in person or by Advo-

cate and having stood over for consideration till this day, and the Court delivered the following Order :—

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : 4-12-1992

**CORAM**

The Honourable Mr. Justice Maruthamuthu  
Election Petition No. 4 of 1991

P. N. Subramaniam ...Petitioner.

Vs.

1. B. Devarajan.
2. Kangani C. N.
3. G. Sugannya.
4. Tmt. Susi Rajendran M. K.
5. A. C. Sundararajan.
6. A. Dharamarajan.
7. D. Rajagopal.
8. P. Ramaswami.
9. P. Jayapaul.
10. A. Ganapathy.
11. K. Kaliyaperumal.
12. R. Kuppusami.
13. K. Gurusami.
14. Mummudi Arasan.
15. The Returning Officer, 15, Rasipuram (SC) Parliamentary Constituency and District Revenue Officer, Salem. ...Respondents.

For the Petitioner—Mr. T. Kandasami & another.

For the 1st Respondent—Mr. S. Jagadeesan & others.

For the 15th Respondent—Mr. P. Rajamanickam, Government Advocate.

**ORDER**

This petitioner has been filed under Sections 81, 36 and 100(1)(c) of the Representation of People Act, 1951 and Rule 3 of the Constitution (Scheduled Castes) Order, 1950 and Rules of Madras High Court Election Petitions, 1967, for declaration that the order of rejection of the nomination of the petitioner by the 15th respondent as not valid and that the election of the first respondent as Member of the Lok Sabha from No. 15, Rasipuram Parliamentary Constituency in the election held on 15-6-1991 as void and to set aside the declaration made on 17-6-1991 as void.

2. The petitioner has made the following averments in his petition :

(i) The petitioner belongs to Vettuvan Barber community. The father of the petitioner was also Vettuvan Barber. The petitioner was born at Pallipalayam in Salem district. He belongs to Vettuvan sect of Barber community. Vettuvan (in Kanyakumari district and Shencottah Taluk of Tirunelveli district) is noted as Scheduled Caste in the list of Scheduled Castes. In the caste system in the Southern India, the high caste people used to engage barbers. The barbers engaged for service of high caste people are forbidden to serve the low caste people on the ground of untouchability in the distant past and vice versa. One such caste in Vettuvan and the barbers who serve for the Vettuvan are Vettuvan Barber—Vettuvan Navithan—Ampattan. The forefathers of the petitioner migrated from Tamilnadu which is the present Kanyakumari district to Kongunadu in the Northern District during 19th century and settled in and around Salem district. The petitioner is one of the descendants living in Salem district as a member of Vettuvan Navithan community which is a sub sect of barber community.

(ii) Nominations were called for in April, 1991 for the Lok Sabha General Elections to be held in May-June, 1991. No. 15 Rasipuram (SC) Parliamentary Constituency in Salem District is reserved for Scheduled caste candidates. The petitioner and Respondents 1 to 14 filed their nomina-

tions before the 15th Respondent, the Returning Officer. Among them, Respondents 10 to 14 had withdrawn their nominations. But, the nomination of the petitioner was improperly rejected by the 15th Respondent. Then, the first respondent was declared elected by the 15th Respondent on 17-6-1991. On 27-4-1991 when the nomination of the petitioner was scrutinised, the 15th Respondent declined to accept the petitioner's stand that he belongs to Scheduled Caste and is entitled to contest the election for the Lok Sabha seat from No. 15, Rasipuram (SC) Parliamentary Constituency. The 15th Respondent passed an order in one line as "community certificate not produced rejected". None raised objection to the petitioner's nomination. The 15th Respondent did not give an opportunity to the petitioner of being heard and has passed the said one line order on the nomination paper of the petitioner. Later, the petitioner has come to know to his surprise that a detailed order has been written by the 15th Respondent on the objection raised by the first respondent. The nomination of the 11th Respondent was also rejected in the presence of the petitioner as community certificate was not produced, but subsequently it was found altered and his nomination was accepted. However, the 11th respondent had withdrawn his nomination subsequently. The 15th Respondent had acted against the mandatory provisions of the statute and committed material irregularity by improperly rejecting the nomination. The petitioner is Vettuvan Barber by birth and is a member of the Scheduled Caste and his nomination was perfectly in order and so the rejection of the nomination of the petitioner on the ground of non-production of the community certificate is improper. In the circumstance, he prayed for the reliefs mentioned above.

3. The first respondent filed a counter contending as follows :

The petitioner is not a member of Scheduled Castes, eligible to contest from No. 15, Rasipuram (SC) Parliamentary Constituency. There is no Vettuvan Barber community in Salem district. The S.S.L.C. certificate produced by the petitioner discloses that he belongs to "Indian—Hindu—Barber" In the Constitution (Scheduled Castes) Order, 1950 Part 16 (hereinafter mentioned as the Order) which enumerates the Scheduled Castes in Tamil Nadu neither the "barber community" nor the "Hindu—Barber" has been enlisted and so the petitioner cannot claim to belong to Scheduled Caste community. There is no record to prove that the father of the petitioner belongs to Vettuvan Barber community. The petitioner admits that he was born in Paylippalayam in Salem district and so he can claim to belong to Barber community of Salem district and nothing more. There is no record to show that the petitioner belongs to Vettuvan sect of Barber community as claimed. Vettuvan has been shown as item No. 76 in the Order as a separate class and not as a sub-sect of any major sect of Scheduled Castes. The averment of the petitioner that his forefathers migrated from Kanyakumari district to Salem district is not true. Even assuming that the petitioner belongs to Vettuvan community, he cannot be considered to belong to Scheduled Caste in Salem district. The community "Indian—Hindu—Barber" mentioned in the S.S.L.C. certificate of the petitioner is not notified as a Scheduled Caste in the Order. The first respondent raised objection to the nomination of the petitioner and then only the petitioner clarified his position that Vettuvan is a sub-sect of Barber community. The 15th Respondent did not agree with the claim of the petitioner and he rejected the nomination of the petitioner. He did not produce community certificate to show that he belongs to Vettuvan Barber community. The 15th Respondent passed a detailed order only at the request of the petitioner. The petitioner belongs to a notified backward community and not to Scheduled Caste. There is no impropriety or illegality in the rejection of the nomination of the petitioner by the 15th Respondent.

4. The 15th Respondent contended in his counter as follows :

For No. 15, Rasipuram (SC) Parliamentary Constituency which is reserved for Scheduled Caste, only persons belonging to Scheduled Caste can file nominations. On 27-4-1991 when the nominations were scrutinised by the 15th Respondent, the nomination of the petitioner alone was rejected as he has mentioned his community as Vettuvan

Barber in his nomination form, on the objection raised by the first respondent that the petitioner belongs to Barber community and not to Scheduled Caste community. The petitioner produced a photostat copy of the front page of his S.S.L.C. book which mentioned his community as "Indian—Hindu—Barber" Vettuvan community in Kanyakumari district and Shencottah Taluk of Tirunelveli district is included as No. 76 in the Order. There is no community as Vettuvan Barber in the list, nor there is any community by name "Barber". Maruthuvar is included in the list of Backward Classes as Serial No. 109 of G.O.Ms. No. 1564, Social Welfare, dated 30-7-1985 and it is subsequently included as Serial No. 19 in the list of Most Backward Classes in G.O.Ms. No. 242, Backward Classes Welfare, Nutritious Meals Programming and Social Welfare Department, dated 28-3-1989. The first respondent was declared elected by the 15th Respondent on 17-6-1991 for No. 15, Rasipuram (SC) Parliamentary Constituency. Since the petitioner was born at Pallipalayam in Salem District and it is only Vettuvan in Kanyakumari District and Shencottah Taluk in Tirunelveli district that is noted as Scheduled Caste, the petitioner does not belong to Scheduled Caste eligible to contest from Rasipuram (SC) Parliamentary Constituency. There is no need to produce any certificate to prove the caste of a candidate. But, before taking up the nomination of Kaliyaperumal (11th Respondent), nomination of the petitioner was taken up and then the question whether Vettuvan Barber is of Scheduled Caste or not arose and certificate was asked for from the petitioner. When the 15th Respondent was about to reject the nomination of the 11th Respondent for non-production of a certificate, the 15th Respondent corrected his stand and accepted the declaration of the 11th Respondent and his nomination. There was no rejection of the nomination of the 11th Respondent as alleged. The rejection of the nomination of the petitioner by the 15th Respondent is valid and is not improper.

5. The petitioner filed a reply affidavit stating that he did not desire a detailed order of rejection from the 15th Respondent for the purpose of representation to Government authorities for inclusion of barber community as Scheduled Caste.

6. The other respondents remained ex parte.

7. The following issues were framed for trial:—

- (1) Whether the petitioner who claims to belong to Vettuvan Barber community is a member of Scheduled Caste and is eligible to file his nomination for Rasipuram (SC) Parliamentary Constituency.
- (2) Whether the rejection of the nomination of the petitioner for No. 15, Rasipuram (SC) Parliamentary Constituency by the 15th Respondent is improper?
- (3) Whether the petitioner is entitled to the declarations prayed for?
- (4) To what relief the parties are entitled?

8. It is not in dispute that the petitioner herein had filed his nomination paper (Ex. P-1) on 26-4-1991 for No. 15, Rasipuram Parliamentary Constituency which is a Reserved Constituency for Scheduled Caste and that on 27-4-1991, the Returning Officer (15th Respondent) had rejected the nomination of the petitioner with the result the petitioner could not contest the election. The first respondent herein was declared to be the elected candidate on his securing the majority votes. The present petition has been filed by the petitioner questioning the election of the 1st respondent herein for No. 15, Rasipuram Parliamentary Constituency alleging that the nomination of the petitioner was improperly rejected by the 15th Respondent and for declaration that the order of rejection of the nomination of the petitioner by the 15th Respondent is not valid and the election of the 1st respondent as member of the Lok Sabha from No. 15, Rasipuram Parliamentary Constituency in the election held on 15-6-1991 as void. The main grounds on which the petitioner would challenge the order of the Returning Officer (15th Respondent) are: (1) that he belongs to Vettuvan (Barber) community which is a Scheduled Caste, but that the 15th Respondent did not properly consider the claim of the petitioner and had rejected the nomination; (2) that the 15th Respondent has passed one line

order rejecting the nomination of the petitioner without assigning any reason and subsequently has passed an elaborate order giving reasons; (3) that while the 15th Respondent had accepted the nomination of Kaliaperumal (11th Respondent) because he has stated in his declaration that he belongs to Pallan (Scheduled Caste), the 15th Respondent ought to have accepted the nomination of the petitioner since he has stated that he belongs to Vettuvan (Barber) community and the word mentioned in brackets is not a bar for acceptance of the nomination; (4) that the 15th Respondent ought to have given one day's time and posted the enquiry to the next day of the scrutinising date to enable the parties to adduce evidence since the predominant view in the mind of the Returning Officer is the production of the community certificate to establish the claim of petitioner and in view of Section 36(5) of the Representation of the People Act, 1951; and (5) that under Article 341 of the Constitution of India, the President of India has no power to restrict the Scheduled Caste to any part of the State.

9. How, we may proceed to consider the contentions of the petitioner. Section 33(2) of the Representation of the People Act, 1951 states :—

"In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State."

As such, the declaration requires a candidate to specify two facts, viz., (1) his caste or tribe, as the case may be, and (2) the area in the State where that caste or tribe to which the candidate claims to belong is a Scheduled Caste or Scheduled Tribe. Ex. P-1, the nomination form of the petitioner also contains his declaration and the same declaration, of course may be sufficient if there is no dispute and an enquiry is contemplated in the event of dispute. The claim of the petitioner has to be considered on the basis of the pleadings and the evidence. The Court also, even if it is of opinion that better evidence could have been adduced by the parties, has to confine its finding on the evidence adduced by the parties.

10. The petitioner in the present case would allege in his petition that he belongs to "Vettuvan Barber community", "Vettuvan sect of Barber community", and "Vettuvan Navithan community" which is a sub-sect of Barber community and would claim that he belongs to Scheduled Caste eligible to file nomination for No. 15, Rasipuram (SC) Parliamentary Constituency and to contest the election, but that his nomination has been improperly rejected by the 15th Respondent. But, when his claim put forth in his petition and deposed by him in his evidence is considered, it will show that the claim of the petitioner is not sustainable. When he would say that he belongs to Vettuvan sect of Barber community, he would implicitly admit that the Barber community is the main community of which Vettuvan is a sub-sect. His own admission is that the Barber community as a whole is included in the list of Most Backward Classes as Maruthuvar, Arunthathiar, Navithar, Mangalar, Vilakkathaliyari and Pronapukari and that in the State of Tamil Nadu, Barbers are mainly known as Maruthuvars and Navithars. It is also his evidence that Barber community is not included in any of the lists and that even in the list of Backward Classes the word "Barber" is not there. The petitioner, however, would seem to mean by that Barber would mean Ampattan, Maruthuvar and Navithar. The word "Ampatten" is found in Serial No. 17 while Maruthuvar and Navithar would be found in Serial No. 165 of the other Backward Classes List in Tamil Nadu. When evidently, the petitioner would admit that Barber community is not a synonym of Backward Class, Ampattan Maruthuvar and Navithar which are characterised as castes coming under the Backward Classes. At the same time, it would only show that the petitioner is not entitled to claim himself as to be a person belonging to Scheduled Caste Vettuvan sect of Barber community. First of all, the petitioner must see provide the whether

there is basis for him to lay his claim as a member of Scheduled Caste. Mere assertion that he belongs to Vettuvan sect of Barber community and that the same is recognised as a Scheduled Caste will not suffice. A perusal of the copy of the first page of the S.S.L.C. book of the petitioner (Ex. P-2) and the letter dated 26-4-1991 (Ex. P-3) and the letter dated 27-4-1991 (Ex. P-4) by the petitioner to the 15th Respondent will themselves be enough to negative the claim of the petitioner. In Ex. P-2 the petitioner's nationality is shown as Indian, his religion as Hindu, but his caste as 'Barber'. There is no mention of his community as Vettuvan or as Vettuvan Barber in Ex. P-2. In fact, what is mentioned in Ex. P-2 has been acknowledged as correct by the father of the petitioner Nachitnuthu also who has signed the declaration dated 9-8-1958 with regard to the date of birth of the petitioner in the school records. The petitioner has not taken steps to have the name of the entry "Barber" mentioned in Ex. P-2 changed to "Vettuvan" or "Vettuvan Barber" at any time so far, nor he has obtained any certificate from the competent authority of the Revenue Department evidencing the fact that he belongs to Vettuvan sect of Barber community. In fact, this is one of the reasons by which the 15th Respondent had rejected the nomination of the petitioner on 27-4-1991.

11. If we look at Exs. P-3 and P-4 mentioned above, they will show that the petitioner himself is not definite that he belongs to Vettuvan sect. While admitting that the caste Barber as a whole is included in the list of Most Backward Classes as Maruthuvar, Arunthathiar, Navithar, Mangalar, Vilakkathaliyari and Pronapukari and that in the State of Tamil Nadu, Barbers are mainly known as Maruthuvars and Navithars with various sub-sects in that main community, he would state that Barber community also suffers from social disability and that therefore they must also be included in the list of Scheduled Castes. The petitioner would state in Ex. P-3 that he had already made representations before the Mandal Commission and before Narasimha Rao Commission and the Ministers of Central Government for the inclusion of his community in the list of Scheduled Castes, but that there was no response. While making such a statement, he would also claim that he belongs to Vettuvan sub-sect of Barber community entitled to the benefits of 'Vettuvan' mentioned in the list of Scheduled Castes. In Ex. P-3 he would refer to the authority on Castes and customs of South India by Thurston which mentions Vettuvan as Chandalars who are untouchables. The same is the reasons advanced by the petitioner before the 15th Respondent for acceptance of his nomination on 27-4-1991. In Ex. P-4, he says :—

"I am deemed to belong to Scheduled Castes. I most respectfully beg to submit that I belong to VETTUVAN sub-sect of Barber community. I am entitled to the benefits of the inclusion of the name VETTUVAN in the list of Scheduled Castes.

Therefore, I most humbly pray that my nomination to contest for the election for the 15 Rasipuram Parliamentary Constituency may kindly be accepted."

All these facts will be only illustrating the fact that the petitioner himself was conscious of the fact that his community has not been included as one in the list of Scheduled Castes in the Order and that what all he had aspired till the filing of his nomination before the 15th Respondent was that Vettuvan caste should also be included in the list of Scheduled Castes. Learned counsel for Respondent 1 and 15 may not be incorrect if they state it is stated that the object of filing the very nomination by the petitioner claiming himself as Vettuvan and as one belonging to Scheduled Castes, was just to ventilate his grievance to the public and Governmental authorities and nothing else. If the petitioner would feel aggrieved that Vettuvan caste must also be included in the list of Scheduled Castes, his remedy is elsewhere and not before the Election authorities. His reference to the treatise on Castes and Tribes in South India by Thurston which makes reference to Vettuvan, is purely irrelevant. In *Parsram v. Shivchand* (AIR 1969 S.C. 597) the Supreme Court has observed that while dealing with an Election Petition that it would be of no use to look into the Gazetters and the glossaries when considering the question of castes and tribes.

12. Having failed to prove that the petitioner belongs to Vettuvan caste and that it is one coming under the Scheduled Castes, the petitioner has also failed to note one establish another significant fact to be established also. It is not that the proof of a person belonging to Vettuvan Caste alone is enough to make himself a Scheduled Caste man. If we look at the list of Scheduled Castes mentioned in the Order it is not simply "Vettuvan" that is mentioned as one of the Scheduled Castes. Along with "Vettuvan" there is also something else making reference to the place to which the "Vettuvan" caste belongs. Serial No. 76 under Tamil Nadu in the said Order, is as follows :

"76. Vettuvan (in Kanyakumari District and Shencottah Taluk of Tirunelveli district.)

The petitioner has completely forgotten that Vettuvans of Kanyakumari District and Shencottah Taluk of Tirunelveli District alone will be eligible to claim themselves as Scheduled Castes and that Vettuvans residing elsewhere cannot lay claim to the same. Section 33(2) of the Representation of the People Act, 1951 is quite clear on this point as it says that the nomination paper of a candidate belonging to Scheduled Caste should contain a declaration specifying not only the particular caste or tribe of which he is a member, but also the area in relation to which that caste or tribe is a Scheduled Caste, or as the case may be, a Scheduled Tribe of the State. So far as the petitioner is concerned, he has not adduced any proof to show that he and his forefathers had ever belonged to or resided in Kanyakumari district of Shencottah taluk of Tirunelveli district. He would vaguely allege in his petition that his forefathers migrated from Nonjilandu (Kanyakumari district) to Kongunadu (Salem district) during the 19th Century. But, there is no material proof to support the same. Admittedly, the petitioner was born at Pallipalayam of Salem district and not in Kanyakumari district of Shencottah Taluk of Tirunelveli district. Mere mention of the words 'Kanyakumari district and Shencottah taluk in Tirunelveli-Kattabomman district' in his nomination (Ex. P-1) along with "Vettuvan (Barber)" will not clothe him with the right of claiming himself to be a member of Scheduled Caste. Even here, it must be noted that the petitioner has not stopped with the mentioning of "Vettuvan" but has added the word, "Barber" within brackets after "Vettuvan". By adding the word "Barber", the petitioner himself had paved the way for the rejection of his nomination. We have already seen that "Barber" is not a caste coming under the list of Scheduled Castes and that the synonymous names of Barber at Ammatan, Maruthuvar and Havithar find a place in the list of Other Backward Classes. When this is the position, the petitioner will not be justified in alleging that the 15th Respondent had improperly rejected his nomination. The onus of proof was greatly on the petitioner to show that he belongs to Vettuvan of Kanyakumari district and Shencottah Taluk of Tirunelveli district, if his nomination was to be accepted. But, he has not done so. Here, the petitioner would find fault with the restriction made to Vettuvans of Kanyakumari district and Shencottah Taluk of Tirunelveli district alone to come under the Scheduled Caste and would contend that such restriction is unreasonable. According to the petitioner, Vettuvan Caste people living all over Tamil Nadu and not necessarily in Kanyakumari district and Shencottah Taluk of Tirunelveli district, should be categorised as Scheduled Caste eligible to contest from the Scheduled Caste Reserve Constituency. It has to be said that such a course of argument is not open at all to the petitioner. The restriction in relation to area in respect of Vettuvan came to be made at the time when Kanyakumari district and Shencottah Taluk of Tirunelveli district was part of Travancore-Cochin State and on reorganisation, Kanyakumari district and Shencottah taluk of Tirunelveli district came to be added as part of Tamil Nadu. If we see the list of Scheduled Castes in Kerala State, it would be found that "Vettuvan" has been mentioned as a Scheduled Caste (Serial No. 68). It cannot be contended on the side of the petitioner at present that the restriction in relation to the area while mentioning "Vettuvan" as a Scheduled Caste in Tamil Nadu, is meaningless. Evidently, the petitioner has not been enrolled as a member of Vettuvan Community in Kanyakumari district and Shencottah Taluk of Tirunelveli district. He has not enrolled himself as a voter in Kanyakumari district or Shencottah Taluk of Tirunelveli district in order that he may be considered as a person belonging to that area. In the

circumstances, the 15th Respondent was quite justified in rejecting the nomination of the petitioner.

13. Learned counsel for the petitioner strenuously contended that the 15th Respondent had initially passed an order (Ex. R-2) rejecting the nomination of the petitioner, but without assigning reasons and that subsequently he wrote another order (Ex. R-3) in some detail, after scoring off the First order (Ex. R-2) and that the petitioner has been prejudiced as the result. A scrutiny of Exs. R-2 and R-3 reveals no difference with regard to the nature of the orders, as both indicate the rejection of the nomination of the petitioner. The only difference is that there is reference to the objection of the first respondent in the order (Ex. R-3) which is not found in the other order (Ex. R-2). It has to be pointed out here that the mention of the objection of the first respondent in Ex. R-3 is quite immaterial and it does not vitiate the order of the 15th Respondent which has been passed on merits. It might be that the 15th Respondent had omitted to note the objection of the first respondent in the first order (Ex. R-2) and that he was careful to mention the same in Ex. R-3. However, he first respondent has come forwarded and given evidence to the effect that he was present at the time of scrutiny of the nomination of the petitioner and raised objection to it saying that the petitioner does not belong to Scheduled Caste, but to a Backward Class. But otherwise Section 36(2) of the Representation of the People Act, 1951 also makes it clear that either an objection made or on his own motion, the Returning Officer may decide as to the validity or otherwise of the nomination of a candidate. When a question is raised in an Election Petition as to the propriety of the rejection of a nomination paper, the relevant point to be decided will of the propriety of the nomination and not the decision of the Returning Officer. It has been held in *Veluswami v. Raja Nainar* (AIR 1959 S.C. 422) as follows :

"..... in determining whether a nomination was improperly rejected, the Election Tribunal was not bound to confine its enquiry to the ground on which the returning officer rejected it and that even if the ground on which the returning officer rejected the nomination could not be sustained, the rejection could not be held to be improper if the Tribunal found other fatal defects in the nomination."

It has also been observed in the said judgment :

"Anomalies will disappear, and the law will be found to be simple and logical, if it is understood that when a question is raised in an election petition as to the propriety of the rejection of a nomination paper, the point to be decided is about the propriety of the nomination and not the decision of the returning officer on the materials placed before him, and that decision must depend on whether the candidate is duly qualified and is not subject to any disqualifications as provided in Section 36(2)."'

It may also be pointed out here that this Court is not sitting as an appellate Court over the decision of the Returning Officer to consider the material irregularities or the correctness of the order as such. As already pointed out the Court has to consider only the propriety of the nomination which means, whether the declaration made by the petitioner was in order and whether he had proved his claim that he belongs to Scheduled Caste. Reference to the rejection of the nomination of the 11th Respondent in the first instance and then accepting the same by the 15th Respondent, will not advance the case of the petitioner any way. The 15th Respondent has initially written "Community certificate not produced. Rejected" and then secured the word "Rejected". Then he has written "However, he has given a declaration that he belongs to Pallan which is S.C. Accepted." Of course, all these have happened on 27-4-1991 itself. It must be noted here that the 11th Respondent has mentioned his caste as Pallan which is shown as Serial No. 49 in the list of Scheduled Castes. The 15th Respondent seems to be satisfied with the facts mentioned by the 11th Respondent and also the declaration made by him and thereafter accepted the nomination. This is not comparable to the case of the peti-

tioner which is entirely different. The point whether the petitioner belongs to Vettuvan Caste as specified in the list of Scheduled Castes was all the more important for decision before the 15th Respondent and that was not established by the petitioner.

14. The contention on behalf of the petitioner that the 15th Respondent had rejected the nomination of the petitioner even without affording sufficient opportunity to prove his claim till the next day, is found to be without merit. This is a case in which the 15th Respondent is supposed to make a summary enquiry as contemplated under Section 36(2) of the Representation of the People Act, 1951. Section 36(5) of the said Act is as follows :

"The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned."

In the present case, the denial of opportunity to adduce proof by the petitioner with regard to his caste and the question of adjournment of the proceedings till the next day, did not arise as the petitioner himself had gone readily to the 15th Respondent with Ex. P-2, Ex. P-3 and Ex. P-4

and produced the same before the 15th Respondent and he did not seek any further time to produce records to prove his caste. His evidence is that even earlier, he applied to the Tahsildar for issue of a community certificate stating that he belongs to Scheduled Caste, but that was not given to him. In the circumstances, I hold that the petitioner cannot have any grievance over the rejection of his nomination on 27-4-1991 itself when the scrutiny took place. I am not inclined to accept the contention of the petitioner that his nomination has been improperly rejected by the 15th Respondent.

15. In the result, this petition is dismissed. Respondent 1 and 15 are entitled to costs and they are permitted to withdraw the sum of Rs. 2,000 deposited in the High Court by the petitioner, in equal moieties.

The substance of this order shall be intimated to the Election Commission and the Speaker of the Lok Sabha and an authenticated copy of this order shall be sent, as soon as possible, to the Election Commission as per terms of Section 103 of the Representation of the People Act, 1951.

Dated : 7-12-1992  
Index : Yes/No.  
M.C.

Witness the Hon'ble Thiru Viswanatha Ratnam, Acting Chief Justice at Madras aforesaid, this the Fourth day of December, 1992.

Sd/-  
Assistant Registrar.  
Original Side-II